UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA v. MICHAEL PERSAUD, also known as "Michael Pearson," "Michael Prescott," and "Jeff Martinez"	No. 16 CR 793 Judge Andrea R. Wood

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO BAR, IN PART, CERTAIN OPINIONS OF THE GOVERNMENT'S "EXPERT" WITNESS, DR. JOHN LEVINE, OR FOR A *DAUBERT* HEARING

EXHIBIT A

U.S. Department of Justice

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***United States v. Michael Persaud*, No. 16 CR 793**

Dear Counsel:

Pursuant to Rule 16(a)(1)(G) of the Federal Rules of Criminal Procedure, the government hereby notifies you that, at trial, the government intends to present expert testimony, as detailed below.

1. <u>Dr. John Levine</u>

The government intends to call Dr. John Levine to provide expert testimony regarding email transmission and spam marketing. Dr. Levine's *curriculum vitae* and a list provided by Dr. Levine of matters in which he has provided expert testimony are enclosed.

The government anticipates that Dr. Levine may testify that companies who host email services on behalf of users are often known as email providers. Examples of such email providers include large companies such as Comcast or Google, but may also include smaller companies. Email providers typically operate at least one email server connected to the internet, which routes emails from the sender to the recipient. Each email server typically has at least one unique Internet Protocol (IP) address associated with it, which helps identify that server to others. Once a user composes

and sends an email, that email is transmitted to an email server operated by the sender's email provider. That server then uses Simple Mail Transport Protocol (SMTP) to locate an email server operated by the recipient's email provider and inform that email provider about the email to allow the provider to determine whether it should deliver that email. Assuming that the answer is yes, that email is delivered to the recipient via the email server run by the recipient's email provider.

The government anticipates that Dr. Levine may define "spam" as email sent in bulk to recipients who do not want the email. Spam comprises the majority of emails sent in the world. The most common use of spam is to advertise commercial products and/or services, while the second-most common use of spam is to further fraud schemes. Spam is technically sent the same way as any other email, but that people who send spam ("spammers") commonly use computer programs that connect to email servers and send lots of emails very quickly. Spammers typically obtain recipient email addresses by buying lists of addresses, or guessing recipient addresses. Spammers typically make money in exchange for sending spam on behalf of others.

The government anticipates that Dr. Levine may testify that email providers and/or individual users commonly operate spam filters, which are computer programs designed to automatically detect whether an incoming email is spam. If the filter determines that the email is spam, the filter will automatically block the spam from the user's inbox. These filters apply automated rules to determine whether an incoming email is spam, including by looking at an email's technical characteristics (*e.g.*, whether it was sent from an email server in a different country known for sending spam), the email's contents (*e.g.*, whether there are patterns in the email's text that is more likely to occur in spam), and/or by consulting "blacklists" operated by various third parties. Blacklists are lists of IP addresses associated with email servers through which spam has been sent to complaining recipients, who have flagged given messages as spam. Once flagged, that spam can be traced to a specific email server through the spam's header data, and that email server's IP address reported to a blacklist. If an email server's IP address appears on a blacklist, then any spam filter who consults that specific blacklist will automatically block any emails sent by that server from reaching the recipient's inbox. Spammers commonly attempt to defeat spam filters in a variety of ways, including by arranging to route spam through different email servers or editing the spam's text.

Dr. Levine may testify that email providers typically have a rule, communicated to their users in the providers' terms of service, which prohibits using that email provider to send spam. The no-spam rule exists because once the IP address of an email provider's email server appears on any blacklist, then any spam filter consulting that blacklist will block any emails sent by that server. That would typically include any legitimate emails sent by other users of that email provider, who will experience error messages when they attempt to send emails. This would

typically cause legitimate users of that email provider to cancel their service with that provider—thereby causing the provider to lose revenue—and move to a different provider that does not operate a blacklisted email server. Accordingly, email providers typically prohibit users from using their email service to send spam because of the risk of lost revenues from their email servers being blacklisted. The consequences of violating this rule may ultimately include termination of that user's account with the email provider. Spammers may attempt to defeat the providers' no-spam rules through various methods, including by altering the timing of when they send spam relative to when they sign up for service, and by signing up for service from new email providers under a fake identity.

The bases of Dr. Levine's testimony are his training and experience. Dr. Levine is being compensated by the government at a rate of $400 per hour.

2. FBI Computer Forensic Examiner Kerry J. Kolecheck

The government intends to call Kerry J. Kolecheck, FBI Computer Forensic Examiner, as an expert in the field of computer forensics. Mr. Kolecheck has approximately ten years of experience as a computer forensic examiner at the FBI. As detailed in his enclosed *curriculum vitae*, Mr. Kolecheck obtained his A.D. as an Electronic Computer Technician from Gateway Technical College in 1987, and his B.S. in Industrial Engineering from the University of Wisconsin, Milwaukee in 1993. After working as an engineer from 1988 through 2004, he began his career at the FBI in a support role. In 2009, he began working as a computer forensic examiner on the FBI Milwaukee's Computer Analysis Response Team. Since 2009, he has completed approximately 35 computer and forensics-related courses; received approximately 10 certificates and awards; and given approximately 7 presentations in this field.

The government anticipates that Mr. Kolecheck may testify about the forensic analysis performed in 2016 of a Western Digital My Passport hard drive (the "WD Hard Drive") seized from defendant Michael Persaud in June 2016, including (1) a Dell Studio XP5 8000SE, serial number GR6YD51 and associated hard drives; (2) an Apple MacBook Air, serial number C02H60GCDRQ4, and associated hard drives; an Apple iMac, serial number D25N601YFLHH; (4) a Buffalo Linkstation LS-Q4, serial number 95824590505372, and associated hard drives; and (5) a Dell Studio XPS M1640, serial number 21F18J1, and associated hard drive (the "Electronic Devices"); including that forensic images were created of the Electronic Devices, that forensic images are a bit-for-bit copy of the Electronic Devices using specific imaging software, and that an MD5 hash algorithm was used to confirm the image was an exact duplicate of the Electronic Devices; and about the derivative evidence created of the Electronic Devices, based upon the review and selections made by the investigating FBI agent, which derivative evidence he will introduce into evidence at trial.

The government also anticipates Mr. Kolecheck may testify about his examination of the images of the Electronic Devices, including the computer and user names associated with each device, browser search history, IP addresses assigned to the each device, IP addresses accessed from each device, text, Word, Excel, and PDF documents created or accessed from each device relevant to defendant's spam campaigns, spam emails sent, financial records, instructional videos on how to send spam, and identification information and emails for Michael Pearson and Jeff Martinez.

* * *

We recognize our obligation for continuing disclosure pursuant to Rule 16, and request reciprocal expert disclosures from you pursuant to Federal Rule of Criminal Procedure 16(b)(1)(C). Should we receive any additional information relating to these experts, we will supplement our disclosures accordingly. Please do not hesitate to contact us if you have any questions or concerns.

Very truly yours,

JOHN R. LAUSCH, JR.
United States Attorney

By: */s/ Devlin N. Su*
Shoba Pillay
Devlin N. Su
Assistant United States Attorneys

Enclosures

John R. Levine
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Employment

(2020-2021) Interim RFC Series Editor, Internet Engineering Task Force (IETF)

The RFC Series Editor oversees the publication of the Request For Comment (RFC) series. The Editor manages development of the software tools that produce RFCs, and oversees the editorial team that produces and publishes RFCs.

(2006-present) Standcore LLC, Trumansburg, N.Y.

Advanced technical projects. Standcore has executed a wide range of projects from a DNS conformance and test suite to the design of DNS-based cryptographically secure e-mail to a toolset for DNS configuration systems.

(1987-present) Taughannock Networks (Ta-GONN-ick), Trumansburg, N.Y.

Writer, Lecturer, and Consultant. Wrote or co-authored numerous books including the best-selling *Internet for Dummies* and related titles, with over eight million copies in print. Speaks to many trade and general groups; gave invited talk at the Federal Trade Commission spam forum and authentication summit, International Telecommunications Union WSIS spam conference, and the Messaging Anti-Abuse Working Group. Expert witness in civil and criminal court cases related to patents, software copyright, e-mail, and other technical areas. Testified on spyware for the U.S. Senate Commerce Committee, and consulted extensively with the FTC about the implementation of the CAN SPAM act. Member of Industry Canada Task Force on Spam.

(2012-2013) Interisle Consulting Group, Hopkinton MA

Part of a team doing technical analyses of applications for new top level domains (TLD) for ICANN, the Internet Corporation for Assigned Names and Numbers. Built an extensive set of automation tools to track several thousand applications and reviews.

(2006-2008) Domain Assurance Council, Inc., Trumansburg, N.Y.

Co-founder and director of non-profit trade association. DAC was set up to identify and standardize technology for e-mail security based on domain names. We developed Vouch-by-Reference, a technique that permits certifying organizations to publish lists of domains they certify, that mail systems can query in real time. The Internet Engineering Task Force accepted VbR and published it as RFC 5518.

(2005-2006) Blackvine Consulting, G.P., Montreal, Québec.

Partnership doing project consulting to government and industry in Canada. Created an in-depth study on international aspects of Canadian spam for Industry Canada.

(1989-2007) Segue Software, Lexington, Mass.

Co-founded Segue, a NASDAQ listed software company. Initially did DOS to UNIX re-engineering; later Segue became a leading provider of Web and client/server testing software. Was a corporate director and audit committee member until the company merged into Borland Software in 2007.

(1993-96) Journal of C Language Translation, Cambridge, Mass.

Edited and published quarterly technical journal about computer language and compiler technology and standards. Contributors included P. J. Plauger, Dennis Ritchie, and many others.

(1984-87) Javelin Software, Cambridge, Mass.

One of the authors of Javelin, an award-winning PC modeling and analysis program. Wrote systems and numeric parts of the program, e.g., financial functions, wrote and managed program development building tools and process. Also acted as corporate DP director managing 800 ordering, credit card processing, shipping logistics, etc.

(1979-84) Interactive Systems Corp., Santa Monica Calif. and Cambridge, Mass.

Was a principal developer at Interactive, the first commercial UNIX vendor, opened their Boston Technical Office which grew to about 20 employees. Primary kernel architect for IBM's AIX 1.0, wrote the original UNIX C compiler and assembler for AIX, and INfort, the first commercial Fortran 77 system.

Related Activities

(2015-2018) The Internet Society (ISOC)

Appointed as Trustee of ISOC, the oldest and largest organization that promotes the open development, evolution, and use of the Internet for the benefit of all people throughout the world. Also the corporate Secretary.

(2005-present) M3AAWG (Messaging, Malware, Mobile Anti-Abuse Working Group)

Senior Technical Advisor to the premier industry anti-abuse organization. Provides advice to management, technial facilitation at meetings, writes and rewrites white papers, and other related activities.

(2005-2007, 2014-2015, 2016-present) Internet Corporation for Assigned Names and Numbers (ICANN)

Since 2016, member of ICANN's Stability and Security Advisory Committee (SSAC,) a group of technical experts that advises the ICANN board on security issues.

Member of the ICANN 2014-2015 Nominating Committee, appointed by the Internet Architecture Board on behalf of the Internet Engineering Task Force.

From 2005-2007, was one of three North American members of the ALAC (At-Large Advisory Committee) which is charged with representing the Internet community outside the specific domain constituencies. With some other new members, he tried to make the ALAC a more effective conduit between Internet users and ICANN.

(2003-2013) IRTF Anti-Spam Research Group

Chaired the ASRG. He rechartered the ASRG, established informal contacts with large Internet providers including MAAWG and Open Group, and set up new working groups. ASRG evaluates and experiments with potential anti-spam technology and forward promising ideas to the IETF for standards work.

(1997-present) Network Abuse Clearing House (abuse.net)

Operates contact database and complaint forwarding service for Internet users. Currently handles over 50,000 requests per day.

(1997-present) Coalition Against Unsolicited Commercial Email (CAUCE)

President of grass-roots organization opposing junk e-mail, with over 13,000 members. In 2006 reorganized CAUCE as a not-for-profit trade association and served as corporate secretary and treasurer, and now president.

(1995-present) Network manager

Operates a private network hosting over 300 Internet domains and web sites with over 300,000 web pages, Formerly operated a mail system with 500 e-mail users, currently about a dozen users.

(1986-present) Moderator, comp.compilers usenet group

Moderates technical interest group on compilers (programs that translate among different computer languages). Estimated readership of 100,000.

Public Service

(1997-2007) Mayor and Trustee, Village of Trumansburg N.Y.

Elected member of the governing board of trustees in 1997, and later mayor in 2004 of his village (pop. 1500) in upstate New York. As trustee, served as Water and Sewer Commissioner. Dealt with municipal utilities regulation, notably cable franchise and telecommunication towers. As mayor, supervised village staff of 12 full time and about 40 part time employees.

(2000-2004) Member, Board of Trustees, First Unitarian Society of Ithaca N.Y.

Elected member of church board. Also has served as chair of finance committee and web master. Chaired the endowment committee.

Publications

Books (some books from before 2000 are omitted)

The Internet for Dummies, 14th edition, Wiley Publishing, 2015 (with Margaret Levine Young).

flex and bison, O'Reilly Media, 2009.

Mobile Internet for Dummies, Wiley Publishing, 2008 (with M. O'Farrell et al.)

Windows Vista: the Complete Reference, Osborne/McGraw Hill, 2007 (with Margaret Levine Young et al.)

qmail, 2004, O'Reilly Media.

UNIX for Dummies, 5th edition, Wiley Publishing, 2004 (with Margaret Levine Young).

Fighting Spam for Dummies, Wiley Publishing, 2004 (with Ray Everett-Church and Margaret Levine Young).

Internet Privacy for Dummies, Wiley Publishing, 2002 (with Ray Everett-Church and Gregg Stebben).

Windows XP Home Edition: the Complete Reference, Osborne/McGraw Hill, 2002 (with Margaret Levine Young).

Linkers and Loaders, 2000, Morgan Kauffman/Academic Press.

Internet Secrets, 2nd edition, IDG Books, 2000.

Internet for Windows Me for Dummies, 2000 (with Margaret Levine Young, Jordan Young, and Carol Baroudi).

Internet for Dummies Quick reference, 6th edition, 2000 (with Arnold Reinhold and Margaret Levine Young).

Graphics File Formats, 2nd edition, Windcrest/McGraw-Hill, 1994 (with David Kay).

lex & yacc, 2nd edition, 1993, O'Reilly (with Tony Mason and Doug Brown).

Programming for Graphics Files in C and C++, 1994, John Wiley.

Understanding Javelin Plus, 1987, Sybex (with M. L. Young and J. M. Young).

Conference papers

"Experiences with Greylisting", Conference on Email and Spam 2005, Stanford CA, July 2005.

Articles

"Canada's new anti-spam law," *Virus Bulletin*, March 2011.

"Why flash web pages are like collateralized debt obligations," *Virus Bulletin*, March 2010.

"Mail authentication with Domain Keys Identified Mail" parts 1 and 2, *Virus Bulletin*, April 2009 and May 2009.

"Is there any hope for e-postage?", *Virus Bulletin*, March 2009.

"Why Programmers Hate the 8086 and 80286", and "386 Architecture Overcomes 286 Defects", *Microprocessor Report* 4(13): 10-15 (August 8, 1990) and 4(14): 6-8 (August 22, 1990).

"An Overview of the Yale Gem System," *Software Practice and Experience* 12(12): 1133-1145 (1982).

Education

Yale University, New Haven, Conn.

B.A., 1975, Computer Science and Mathematical Economics. PhD, 1984, Computer Science, advised by A.J. Perlis. Thesis was *A Data Base System for Small Interactive Computers*.

Litigation in which Dr. Levine has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial during the last five years:

Case Name	Case No.	Filing Date	Court Location	Party Represented	Nature of Testimony
US vs. Adoba	2:18-cr-83-RGK	Jan 10, 2018	California Central	US	Testimony at trial
Symantec Corp, vs. RPost Holdings Et al.	3:14-CV-00238	Jan 15, 2014	California Northern District	Symantec	Report, deposition
XMission vs. Adknowledge et al.	2:15-CV-277 TC	April 21, 2015	Utah District	Plaintiff	Report, deposition
Rockwood Select Asset Fund XI vs. Devine, Millinet & Branch et al.	1:14-cv-00303-JL	July 8, 2014	New Hampshire District	Defendant	Report, deposition
Compu.finder vs. CRTC	9094-2014-003022	March 2015	CRTC, Ottawa	Crown	Affidavit
Trader Corp. vs. Cargurus	CV.15.11232.00CL	Dec 18, 2015	Ontario Superior, Toronto	Defendant	Affidavit and examination
Marquis vs. Google et al	11-2808 BLS	July 2011	Suffolk Superior, Boston MA	Defendant	Report
Carper vs. Adknowledge	CGC-13-533077	2014	San Francisco Superior	Plaintiff	Declaration
Tomelleri vs. Zazzle	2:13-cv-2576-EFM-TJJ	November 2013	Kansas District	Defendant	Report, deposition
Gardner vs. Cafepress	13-CV-1108 GPC	May 2013	California Southern District	Defendant	Report
In re Yahoo mail litigation	13-CV-04980-LHK	2013	California Northern District	Defendant	Report, deposition
US vs. Rad	11-cr-00161	March 2011	New Jersey District (Trenton)	US	Testimony at trial
US vs. McDaid	2:11-cr-171-SD	March 2011	Pennsylvania Eastern District	US	Testimony at sentencing hearing
REC Software vs. Microsoft et al.	2:ll-cv-00554-JRL	2011	Washington Western District	Plaintiff	Report, deposition, testimony at hearing

Perfect 10 vs. Giganews	3:11-cv-905-H (MDD)	2011	California Southern District	Defendant	Report, deposition
Silverstein vs. Deniro Marketing et al	BC382834		California Superior, Los Angeles	Plaintiff	Report